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COUNTY OF SACRAMENTO; FORMER SACRAMENTO COUNTY SHERIFF SCOTT R. JONES;
ANTHONY PAONESSA; and VEEP BABU, M.D.

ANTONI FAOLESSA, and VEER BABU, M.D.,
Exempt from Filing Fees Pursuant to Government Code § 6103

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTHONY GALLEY, Deceased, by and through his Co-Successors in Interest, P.P. and B.P., minors, through their mother and Next Friend, Christina O'Neil, Individually and as Co-Successors in Interest for ANTHONY GALLEY, Deceased.

Plaintiffs,

V.

COUNTY OF SACRAMENTO, a public entity; FORMER SACRAMENTO COUNTY SHERIFF SCOTT R. JONES, in his individual capacity; Jail Commander ANTHONY PAONESSA, Jail Medical Director VEER BABU, M.D., ERICA WOODS, R.N., and DOES 1-20; individually, jointly and severally.

Defendants

CASE NO. 2:23-cv-00325-WBS-AC

**DEFENDANTS COUNTY OF SACRAMENTO,
SHERIFF SCOTT R. JONES, ANTHONY
PAONESSA, AND DR. VEER BABU REPLY TO
OPPOSITION TO MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED COMPLAINT**

Date: July 10, 2023

Time: 1:30 p.m.

Courtroom: 5, 14th Floor

Judge: Hon. William B. Shubb

FAC: 04/21/23

Complaint Filed: 02/23/2023

1 Defendants the County of Sacramento (“County”), Former Sacramento County Sheriff Scott R.
2 Jones (“Sheriff”), Jail Commander Anthony Paonessa (“Commander Paonessa”), and Jail Medical
3 Director Veer Babu (“Dr. Babu”) hereby submit the following reply to the Opposition filed by Plaintiffs
4 to Defendants’ motion to dismiss portions of Plaintiff’s First Amended Complaint (“Complaint”).

5 **I. ARGUMENT**

6 **A. Plaintiffs’ P.P. And B.P. Do Not Have Standing Because They Did Not Seek A Court
7 Approved Guardian Ad Litem Under Local Rule 202**

8 Defendants argued the minor Plaintiffs P.P. and B.P., have not complied with Eastern District
9 Local Rule 202 which requires that upon the commencement of an action or upon an initial appearance,
10 the attorney representing the minor or incompetent person shall present “(2) a motion for the
11 appointment of a guardian ad litem by the Court, or, (3) a showing satisfactory to the Court that no such
12 appointment is necessary to ensure adequate representation of the minor or incompetent person.”

13 In opposition, Plaintiffs argue the appointment of a guardian ad litem is unnecessary as they have
14 made a satisfactory showing of Christina O’Neil as next friend by virtue of the Declarations filed
15 pursuant to California Code of Civil Procedure 377.32. (ECF Nos. 7 and 8). However, Plaintiffs cite to
16 no authority in support of this proposition, and Defendants are unaware of any. Regardless, Defendants
17 would be satisfied should the court find said showing has been made.

18 **B. Decedent Anthony Galley And Christina O’niel Are Not Proper Parties And Should Be
19 Dismissed.**

20 Defendants noted that because of the confusing way in which the caption to the First Amended
21 Complaint of Plaintiffs reads, the docket inappropriately lists Decedent Anthony Galley and Christina
22 O’Neil as parties. Plaintiffs agree neither are parties. (Opposition, p.3:19-25). Accordingly,
23 Defendants respectfully request the Court to issue an order to the clerk that the docket should be
24 corrected to reflect that only P.P and B.P. are party-plaintiffs.

25 **C. The County Is Immune From Direct Liability Under State Law**

26 Defendant County argued that direct liability under state law is foreclosed by operation of
27 California Government Code section 844.6, which accords broad public entity immunity for any injuries
28 to any prisoner, and California Government Code Section 845.2 which provides, “neither a public entity

1 nor a public employee is liable for ... failure to provide sufficient equipment, personnel or facilities [in a
2 jail]."

3 In opposition, Plaintiffs essentially disclaim that they seek to hold the County directly liable, but
4 rather indirectly liable under California Government Code section 845.6 and the Bane Act. (Opposition,
5 p.4:19-23). Given this representation, the motion in this regard would appear moot, and the rest of
6 Plaintiffs' arguments in that regard superfluous.

7 **D. Plaintiffs' Civil Code Section 52.1 Bane Act Claim Fails To Articulate Any Threat,
8 Coercion Or Intimidation By Defendants, nor sufficient facts of specific intent**

9 Defendants argued that Plaintiffs failed to sufficiently allege (1) affirmative acts by the
10 individual defendants to satisfy factual allegations of interference, or attempts to interfere, by threats,
11 intimidation, or coercion, with the exercise or enjoyment of a person's constitutional or statutory rights
12 and (2) the necessary specific intent, to state a valid claim under Civil Code Section 52.1 because the
13 FAC does not plausibly allege any facts to show Defendants Sheriff Jones, Jail Commander Paonessa,
14 or Dr. Babu used threat, intimidation, or coercion in the alleged denial of medical care, and the
15 conclusory statements are not enough in the absence of any allegations any of these defendants were
16 present during Decedent's incarceration at the Sacramento County Main Jail between February 13-15,
17 2022, or had any specific knowledge regarding Decedent's then medical state.

18 In opposition, Plaintiffs appears to confuse and conflate the specific intent requirement with the
19 element of threats, intimidation, or coercion. Plaintiffs rely on district court decisions out of the
20 Northern District of California that effectively reduce the threats, intimidation, or coercion element in
21 the Bane Act to the equivalent of mere intentional conduct inherent in the constitutional violation, citing
22 to M.H. v. County of Alameda (N.D. Cal. 2013) 90 F.Supp.3d 889, and several cases following M.H.
23 Defendants submit these arguments miss the mark.

24 Defendants Sheriff, Commander Paonessa, and Dr. Babu acknowledge that "deliberate
25 indifference" can meet the specific intent standard – but did not argue as much. Instead, Defendants
26 argued the conclusory allegations were factually insufficient. Plaintiffs cite to Paragraphs, 63, 64, and
27 68, but Defendants submit these allegations contain nothing more than conclusory language – not facts.
28 Accordingly, Defendants maintain these allegations are insufficient.

1 Defendants also submit Plaintiffs fail to point out any flaw in the logic that “there is nothing
 2 inherently threatening, intimating, or coercive about failing to provide adequate medical care.” Lowe v.
 3 Cnty. of Butte through Dep’t of Prob. & Sheriff’s Dep’t, No. 220CV01997JAMDMC, 2021 WL
 4 1890386, at *9 (E.D. Cal. May 11, 2021). While Plaintiffs cite to Polanco v. California, No. 21-CV-
 5 06516-CRB, 2022 WL 1539784, at *4 (N.D. Cal. May 16, 2022), (Opposition, p.10:13-14) they
 6 conveniently ignore that the court in Polanco actually found that “allegations of deliberately indifferent
 7 failure to protect an employee do not amount to a ‘threat, intimidation, or coercion.’” The other cases
 8 Plaintiffs cite are regarding specific intent, not threats intimation or coercion. In the end, this case is
 9 more like Lowe as the deliberate indifference is based on an alleged failure to provide adequate medical
 10 care, which does not inherently invoke threats intimation or coercion. Plaintiffs’ complaint has failed to
 11 alleged any facts indicating threats, intimidation, or coercion by Defendants Sheriff Jones, Jail
 12 Commander Paonessa, or Dr. Babu. Therefore, Plaintiffs have failed to state a plausible claim under the
 13 Bane Act and this claim must be dismissed.

14 **E. Plaintiffs’ Negligence Claim Fails To State A Claim For Relief Because Policy Makers Are
 15 Immune From Liability Under Government Code Section 820.2 And 820.8**

16 Defendants Sheriff, Paonessa and Dr. Babu, as alleged policymakers (FAC Paragraphs 7-9),
 17 argued that they are immune from liability for negligence pursuant to California Government Code
 18 Sections 820.2 (discretionary immunity for policy decisions) and 820.8 (for acts of others).

19 Plaintiffs first argue that it is essentially premature to apply discretionary immunity because
 20 some acts could be ministerial. (Opposition, pp. 13-14) This argument should be rejected.

21 The courts define ministerial as “only to an obedience to orders, or the performance of a duty in
 22 which the officer is left no choice of his own,” whereas discretionary acts involve “personal deliberation,
 23 decision and judgment.” Morgan v. County of Yuba (1964) 230 Cal.App.2d 938, 942-943 (quoting
 24 Prosser, Torts (3d ed. [1964]) p. 1015). In Johnson v. State of California (1968) 69 Cal.2d 782, 794, the
 25 court characterized this “distinction” as being “between the ‘planning’ and ‘operational’ levels of
 26 decision-making.” Here, the allegations and the duties alleged by Plaintiffs (Paragraph 74, FAC) do not
 27 appear to make any distinction, such that maintaining policies, ensuring adequate staffing and training
 28 etc all smacks of planning stages, not operational decisions.

1 In opposing the application of California Government Code § 820.8, Plaintiffs argue the
2 allegations involve the respective failures of Defendants Jones, Paonessa, and Babu “to reasonably staff,
3 train, and supervise jail deputies and health care personnel tasked with screening, admitting, observing,
4 monitoring, and protecting inmates. (Opposition, p. 14:21-25).

5 Plaintiffs conveniently ignore that the FAC does not allege any facts showing that Defendants
6 Sheriff Jones, Jail Commander Paonessa, and Dr. Babu were present or knew of a substantial risk of
7 serious harm to Decedent. Plaintiffs merely make conclusory allegations of supervision, based on every
8 claimed failure of the nurse(s) who had interactions with decedent. Such is tantamount to attempting to
9 allege vicarious liability on the individual supervisors, but without any facts to support such a claim.
10 Accordingly, Defendants submit the motion should be granted.

11 **F. Plaintiffs' Claims For Ada & Rehabilitation Act Fail As A Matter Of Law And Should Be
12 Dismissed**

13 Defendants argued that the allegations fail to sufficiently state claims for relief under Title II of
14 the ADA or the Rehabilitation Act,¹ because the FAC does not plausibly allege that Decedent was
15 precluded from access to mental health treatment because of his alleged alcohol dependency, i.e. his
16 disability, and the mere allegations that the County did not treat or provide services to Decedent for
17 alcohol treatment does not equate to discriminatory conduct or intent, particularly because Plaintiffs
18 failed to provide any factual support that Decedent was excluded from participating in or treated
19 differently with respect to any services, programs, or activities at the Sacramento County Main Jail “by
20 reason of” and “solely because” of his purported illness.

21 In opposition, Plaintiffs stand on the allegations, essentially arguing an “outright denial of
22 medical services” is sufficient to imply the reason for the denial was because of a disability. Plaintiffs
23 reliance on “outright denials” of service is misplaced, given that the allegations are that decedence was
24 in fact medically screened (FAC, Paragraph 23), but that the nurse allegedly failed to account for
25 historical claims of being an alcoholic or allegedly failed to account for symptoms of withdrawal, such
26 that decedent should have been placed on a withdrawal protocol (Id, Paragraph 25). This is the same as
27 to purported “accommodation” theory – Plaintiffs do not allege some denial of accommodation because

28

¹ Plaintiffs incorrectly argue their “reasonable accommodation” theory was not challenged, and such a theory still requires a causal connection and discriminatory intent, which Plaintiffs do not sufficiently allege.

1 of a disability – rather Plaintiffs equate the withdrawal protocol as the accommodation. These
2 allegations are hardly an “outright denial” of services, but instead are akin to negligence. More
3 importantly, there is nothing to suggest that Nurse Woods denied decedent access to a withdrawal
4 protocol because of decedent’s status as being an alcoholic. Thus, the cases of outright denial of
5 services are distinguishable under these allegations.

6 Likewise, where Plaintiffs claim some disparate impact or treatment, Plaintiffs has not pled facts
7 supporting the inference that non-disabled detainees were treated more favorably than decedent while
8 detained in county jail.

9 The Plaintiffs’ failed to sufficiently plead claims under the ADA and Rehabilitation Act and
10 there is nothing to indicate that it can assert plausible claims if given another opportunity. As such, these
11 claims should be dismissed, with prejudice, as to all County Defendants.

12 **II. CONCLUSION**

13 For each of the foregoing reasons, the motion should be granted.

14
15 Dated: June 21, 2023

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16
17 By /s/John R. Whitefleet _____
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19 John R. Whitefleet
20 Matthew W. Gross
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